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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,387	02/27/2002	Hideaki Sakai	219028US0CONT	5716

22850 7590 10/08/2003

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/083,387

Applicant(s)

SAKAI ET AL.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20, 22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 22-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claims 1-7, 11-14, 16-20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Green et al in view of Gotoh et al for the same reason set forth in paragraph 2 of the previous office action.

Claims 8-10 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greene et al in view of Gotoh et al. as applied to claims 1-7, 11-14, 16-21 and 22-23 above, and further in view of Miyazaki et al.

In the response filed July 14, 2003, applicant states there is no disclosure in the prior art than any conventional cooking oil can be utilized in the methods of making fried instant noodles. The prior art does not disclose that any conventional cooking oil can be utilized in the methods of making fried instant noodles. However, the teaching of the prior art is more specific. Greene et al teach to fry the noodles in oil and do not restrict the oil to any type. Gotoh et al disclose a general-purpose edible oils having health benefits, storage stability and flavor. The oil of Gotoh et al can be used in stir-frying noodles, as general purpose oil and deep frying oil. It would have been obvious to one skilled in the art to use the oil of Gotoh et al to fry the noodles of Greene et al for the obvious health benefit and superior properties disclosed by Gotoh et al. If the oil can be used for deep frying and stir frying, it can be used for frying noodles because all consist of frying. The differences being in the amount of oil used and the time of frying, not in the use of different oil. There is no specific oil which is only used for making fried instant noodles. Applicant argues some of the oil disclosed by Gotoh et al contain 46.8 and 53.2 diglycerides but are unsuitable for stir-frying. While this may be true, Gotoh et al also disclose oil containing 53.5 % diglycerides and is suitable for

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frying. An oil containing 53.5% diglycerides meets the claimed limitation; thus, Gotoh et al do disclose an oil as claimed and such oil is used as frying oil. Thus, it would have been obvious to choose such oil for the benefits taught by Gotoh et al. Applicant argues one will be dissuaded from utilizing an oil containing 53.2 % diglyceride which is clearly at least 50% diglycerides. One might be dissuaded from utilizing such oil, but one will be motivated to use oil containing 53.5% diglyceride which is also at least 50% diglycerides. Applicant argues the office action uses the present specification to provide the explicit motivation to utilize the oil of Gotoh in the method of Greene et al. The basis of this argument is unclear. The oil as claimed is disclosed by Gotoh et al; they teach the oil can be used for frying and the benefits for using such oil. The motivation to use such oil in the method of Greene et al is plainly seen in the teaching of Gotoh et al. Thus, it is not understood why applicant states the motivation comes from the present specification. On pages 7-10 of the response, applicant gives data to show unexpected results; the showing is not found to be persuasive because objective evidence must be factually supported by an appropriate affidavit or declaration to be of probative value.

Applicant's arguments filed July 14, 2003 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within


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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

October 2, 2003


LIEN TRAN
PRIMARY EXAMINER
Group 1700